

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO. 535 OF 2004
 IN
 NOTICE OF MOTION NO. 1427 OF 2004
 IN
 SUIT NO. 1427 OF 2004

Maharashtra Power Development
 Corporation Limited

Appellants

vs.

1. Dabhol Power Company (DPC) & ors.

Respondents

Mr.N.H. Seervai, senior counsel with Mr.Rahul Chitnis,
 Mr.S.H. Merchant and Mr.Sirish Vardhan i/b. M & M
 Legal Ventures for the appellants.

Mr.Salil Shah with Mr.Rajesh Barot i/b. M/s.Bhaishankar
 Kanga & Girdharlal for the respondent no.1.

**CORAM : R. M. LODHA &
 J.P. DEVADHAR,JJ.**

DATED : 30th August 2004

P.C.

This appeal arises out of the order dated 6th May 2004 whereby the learned motion Judge refused to grant ad-interim relief/s to the appellants/plaintiffs. However, while passing the said order the learned motion Judge observed that notice of motion be heard expeditiously and the notice of motion was ordered to be placed on board in the week commencing from 14th June 2004 (HOB). For one reason or the other, the notice of motion has not been disposed of so far.

2. We heard Mr. N. H. Seervai, the learned senior counsel for the appellants for quite some time. However, in our considered view, the contentions raised by the learned senior counsel for the appellants need not be examined by us since mainly and principally the learned motion Judge was of the view that without affidavits being filed by the contesting defendants, it would not be fair and proper to decide the matter even at the stage of ad-interim relief. We are now informed that the first defendant who is the contesting defendant has already filed the reply affidavit and the plaintiff has filed rejoinder thereto. The notice of motion is, thus, ripe for hearing and, in fact, was to be heard in the week commencing from 14th June 2004, but has not been heard and disposed of so far.

3. We, accordingly, dispose of this appeal by the following order:

- (i) The learned motion Judge is requested to hear and decide the notice of motion as expeditiously as possible and preferably within two months from today.
- (ii) All contentions of the parties are kept open to be agitated at the time of

hearing of notice of motion and any
observation made in the impugned order
obviously shall not influence the
decision in the notice of motion and
shall be decided on its own merits.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)